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Loss making company for Transfer Pricing analysis to include companies declaring losses consistently for 3 consecutive AYs

Summary – The Mumbai ITAT in a recent case of Star International Movies Ltd., (the Assessee) held that Loss making company for Transfer Pricing analysis will include companies declaring losses consistently for 3 consecutive AYs

Facts

- The assessee was a non-resident company incorporate in Hong Kong and was engaged in the distribution of channels and advertising for channels at a global level. It selected 9 companies as comparables.
- The TPO being of view that out of 9 comparables selected by the assessee, 4 companies being either loss making or low profit making companies could not be treated as comparable and, thus, excluded these companies from list of comparables.
- The DRP did not interfere with the decision of the TPO.
- In the instant appeal before the Tribunal, the assessee restricted his argument to exclusion of three comparable companies.

Held - I

- From the facts on record, it is clear that none of these companies can be classified as persistent loss making companies. In various decisions it has been held that unless the company declares loss consistently for three consecutive assessment years, it cannot be considered as a persistent loss making company.
- Though, in the impugned assessment year, the profit margin has fallen drastically, the company has still shown profit. Even if the fall in profit rate is due to write-off of bad debt, still this company cannot be excluded as a comparable since bad debts are operating in nature. In view of the aforesaid, the Assessing Officer / TPO is to be directed to include the aforesaid three companies as comparable and determine the arm's length price accordingly.